

AMENDED IN ASSEMBLY JUNE 24, 1998

AMENDED IN SENATE APRIL 13, 1998

SENATE BILL

No. 1835

Introduced by Senator Johnston

February 19, 1998

An act to amend Sections 51201, 51243, 51243.5, 51255, 51257, 51290, 51290.5, 51291, and 51295 of the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

SB 1835, as amended, Johnston. Land use: Williamson Act contracts.

(1) Under the Williamson Act, upon the annexation by a city of any land subject to a contract with a county that enforceably restricts the land to agricultural use within an agricultural preserve, the city succeeds to all rights, duties, and powers of the county under the contract unless the land being annexed was within one mile of the city boundary when the contract was executed, the contract was executed prior to January 1, 1991, and the city filed a protest of record that identifies the affected contract and the subject parcel or parcels.

Under the Cortese-Knox Local Government Reorganization Act of 1985, a local agency formation commission is authorized to conduct proceedings on a proposal for a change of organization or a reorganization initiated by the filing of a petition or a resolution of application by a local agency.

This bill, in addition, would require the local agency formation commission pursuant to any proposal by a city that would result in the annexation to a city of any land subject to a Williamson Act contract, to determine whether the city is required to succeed to the rights, duties, and powers of the county under the contract or whether the city may exercise an option to not succeed to the rights, duties, and powers of the county. The bill would also require a city to record a certificate of contract termination with the county recorder if the city exercises its option to not succeed to the contract and would authorize the commission to request, and the Department of Conservation to provide, advice and assistance in interpreting these provisions.

The bill would also define “prime agricultural land,” for purposes of the Williamson Act, to include all land which, if irrigated, qualifies for a rating, as specified, whether or not the land is actually irrigated, provided that irrigation is reasonably feasible.

By increasing the duties of local agency formation commissions, the bill would impose a state-mandated local program.

(2) The Williamson Act also authorizes a city or county to contract with a landowner of agricultural land within an agricultural preserve to restrict the use of the land to agricultural use, recreational use, or open-space use for an initial term of not less than 10 years. The act authorizes the parties to mutually agree to rescind the contract in order to enter into an open-space easement agreement pursuant to the Open-Space Easement Act of 1974 to restrict the same property for an initial term of not less than 10 years.

This bill would require that the easement be at least as restrictive as the original contract.

(3) Existing provisions of the Williamson Act provide that in order to facilitate a lot line adjustment, as specified, the parties to a contract that enforceably restricts the use of land within an agricultural preserve may rescind the contract by mutual agreement, and simultaneously enter into a new contract under the act, provided that the board of supervisors or city council involved makes specified findings. Existing law also requires that only one new contract with regard to a given



parcel may be entered into pursuant to these provisions prior to January 1, 2000.

This bill would extend this date to January 1, 2003, and would also make related technical, nonsubstantive changes to these provisions.

(4) Existing provisions of the Williamson Act also require the state to avoid, whenever practicable, the location of any public improvement by a state or local public agency, and the acquisition of the land therefor, in agricultural preserves.

This bill would also apply these provisions to any department or agency of the United States, and would redefine “public improvement” for these purposes. The bill would also make related technical, nonsubstantive changes to these provisions.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(6) This bill would become operative only if SB 2227 becomes effective on or before January 1, 1999.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. *Section 51201 of the Government Code*
2 *is amended to read:*

3 51201. As used in this chapter, unless otherwise
4 apparent from the context:

5 (a) “Agricultural commodity” means any and all plant
6 and animal products produced in this state for
7 commercial purposes.

8 (b) “Agricultural use” means use of land for the
9 purpose of producing an agricultural commodity for
10 commercial purposes.

11 (c) “Prime agricultural land” means any of the
12 following:

1 (1) All land which, *if irrigated*, qualifies for rating as
2 class I or class II in the Soil Conservation Service land use
3 capability classifications, *whether or not the land is*
4 *actually irrigated, provided that irrigation is reasonably*
5 *feasible*.

6 (2) Land which qualifies for rating 80 through 100 in
7 the Storie Index Rating.

8 (3) Land which supports livestock used for the
9 production of food and fiber and which has an annual
10 carrying capacity equivalent to at least one animal unit
11 per acre as defined by the United States Department of
12 Agriculture.

13 (4) Land planted with fruit- or nut-bearing trees,
14 vines, bushes or crops which have a nonbearing period of
15 less than five years and which will normally return during
16 the commercial bearing period on an annual basis from
17 the production of unprocessed agricultural plant
18 production not less than two hundred dollars (\$200) per
19 acre.

20 (5) Land which has returned from the production of
21 unprocessed agricultural plant products an annual gross
22 value of not less than two hundred dollars (\$200) per acre
23 for three of the previous five years.

24 (d) "Agricultural preserve" means an area devoted to
25 either agricultural use, as defined in subdivision (b),
26 recreational use as defined in subdivision (n), or
27 open-space use as defined in subdivision (o), or any
28 combination of those uses and which is established in
29 accordance with the provisions of this chapter.

30 (e) "Compatible use" is any use determined by the
31 county or city administering the preserve pursuant to
32 Section 51231, 51238, or 51238.1 or by this act to be
33 compatible with the agricultural, recreational, or
34 open-space use of land within the preserve and subject to
35 contract. "Compatible use" includes agricultural use,
36 recreational use or open-space use unless the board or
37 council finds after notice and hearing that the use is not
38 compatible with the agricultural, recreational or
39 open-space use to which the land is restricted by contract
40 pursuant to this chapter.

(f) “Board” means the board of supervisors of a county which establishes or proposes to establish an agricultural preserve or which enters or proposes to enter into a contract on land within an agricultural preserve pursuant to this chapter.

(g) “Council” means the city council of a city which establishes or proposes to establish an agricultural preserve or which enters or proposes to enter into a contract on land within an agricultural preserve pursuant to this chapter.

(h) Except where it is otherwise apparent from the context, “county” or “city” means the county or city having jurisdiction over the land.

(i) A “scenic highway corridor” is an area adjacent to, and within view of, the right-of-way of:

(1) An existing or proposed state scenic highway in the state scenic highway system established by the Legislature pursuant to Article 2.5 (commencing with Section 260) of Chapter 2 of Division 1 of the Streets and Highways Code and which has been officially designated by the Department of Transportation as an official state scenic highway; or

(2) A county scenic highway established pursuant to Article 2.5 (commencing with Section 260) of Chapter 2 of Division 1 of the Streets and Highways Code, if each of the following conditions have been met:

(A) The scenic highway is included in an adopted general plan of the county or city; and

(B) The scenic highway corridor is included in an adopted specific plan of the county or city; and

(C) Specific proposals for implementing the plan, including regulation of land use, have been approved by the Advisory Committee on a Master Plan for Scenic Highways, and the county or city highway has been officially designated by the Department of Transportation as an official county scenic highway.

(j) A “wildlife habitat area” is a land or water area designated by a board or council, after consulting with and considering the recommendation of the Department of Fish and Game, as an area of great importance for the

1 protection or enhancement of the wildlife resources of
2 the state.

3 (k) A “saltpond” is an area which, for at least three
4 consecutive years immediately prior to being placed
5 within an agricultural preserve pursuant to this chapter,
6 has been used for the solar evaporation of sea water in the
7 course of salt production for commercial purposes.

8 (l) A “managed wetland area” is an area, which may
9 be an area diked off from the ocean or any bay, river or
10 stream to which water is occasionally admitted, and
11 which, for at least three consecutive years immediately
12 prior to being placed within an agricultural preserve
13 pursuant to this chapter, was used and maintained as a
14 waterfowl hunting preserve or game refuge or for
15 agricultural purposes.

16 (m) A “submerged area” is any land determined by
17 the board or council to be submerged or subject to tidal
18 action and found by the board or council to be of great
19 value to the state as open space.

20 (n) “Recreational use” is the use of land by the public,
21 with or without charge, for any of the following: walking,
22 hiking, picnicking, camping, swimming, boating, fishing,
23 hunting, or other outdoor games or sports for which
24 facilities are provided for public participation. Any fee
25 charged for the recreational use of land as defined in this
26 subdivision shall be in a reasonable amount and shall not
27 have the effect of unduly limiting its use by the public.

28 (o) “Open-space use” is the use or maintenance of
29 land in a manner that preserves its natural characteristics,
30 beauty, or openness for the benefit and enjoyment of the
31 public, to provide essential habitat for wildlife, or for the
32 solar evaporation of sea water in the course of salt
33 production for commercial purposes, if the land is within:

34 (1) A scenic highway corridor, as defined in
35 subdivision (i).

36 (2) A wildlife habitat area, as defined in subdivision
37 (j).

38 (3) A saltpond, as defined in subdivision (k).

39 (4) A managed wetland area, as defined in subdivision
40 (l).

1 (5) A submerged area, as defined in subdivision (m).

2 SEC. 1.5. Section 51243 of the Government Code is
3 amended to read:

4 51243. Every contract shall do both of the following:

5 (a) Provide for the exclusion of uses other than
6 agricultural, and other than those compatible with
7 agricultural uses, for the duration of the contract.

8 (b) Be binding upon, and inure to the benefit of, all
9 successors in interest of the owner. Whenever land under
10 a contract is divided, the owner of any parcel may
11 exercise, independent of any other owner of a portion of
12 the divided land, any of the rights of the owner in the
13 original contract, including the right to give notice of
14 nonrenewal and to petition for cancellation. The effect of
15 any such action by the owner of a parcel created by the
16 division of land under contract shall not be imputed to the
17 owners of the remaining parcels and shall have no effect
18 on the contract as it applies to the remaining parcels of
19 the divided land. Except as provided in Section 51243.5,
20 on and after the effective date of the annexation by a city
21 of any land under contract with a county, the city shall
22 succeed to all rights, duties, and powers of the county
23 under the contract.

24 SEC. 2. Section 51243.5 of the Government Code is
25 amended to read:

26 51243.5. (a) This section shall apply only to land that
27 was within one mile of a city boundary when a contract
28 was executed pursuant to this article and for which the
29 contract was executed prior to January 1, 1991.

30 (b) For any proposal that would result in the
31 annexation to a city of any land that is subject to a contract
32 under this chapter, the local agency formation
33 commission shall determine whether the city may
34 exercise its option to not succeed to the rights, duties, and
35 powers of the county under the contract.

36 (c) In making the determination required by
37 subdivision (b), pursuant to Section 51206, the local
38 agency formation commission may request, and the
39 Department of Conservation shall provide, advice and

1 assistance in interpreting the requirements of this
2 section.

3 (d) A city may exercise its option to not succeed to the
4 rights, duties, and powers of the county under the
5 contract if both of the following had occurred prior to
6 December 8, 1971:

7 (1) The land being annexed was within one mile of the
8 city's boundary when the contract was executed.

9 (2) The city had filed with the county board of
10 supervisors a resolution protesting the execution of the
11 contract.

12 (e) A city may exercise its option to not succeed to the
13 rights, duties, and powers of the county under the
14 contract if each of the following had occurred prior to
15 January 1, 1991:

16 (1) The land being annexed was within one mile of the
17 city's boundary when the contract was executed.

18 (2) The city had filed with the local agency formation
19 commission a resolution protesting the execution of the
20 contract.

21 (3) The local agency formation commission had held
22 a hearing to consider the city's protest to the contract.

23 (4) The local agency formation commission had found
24 that the contract would be inconsistent with the publicly
25 desirable future use and control of the land.

26 (5) The local agency formation commission had
27 approved the city's protest.

28 (f) It shall be conclusively presumed that no protest
29 was filed by the city unless there is a record of the filing
30 of the protest and the protest identifies the affected
31 contract and the subject parcel. It shall be conclusively
32 presumed that required notice was given before the
33 execution of the contract.

34 (g) The option of a city to not succeed to a contract
35 shall extend only to that part of the land that was within
36 one mile of the city's boundary when the contract was
37 executed.

38 (h) If the city exercises its option to not succeed to a
39 contract, then the city shall record a certificate of
40 contract termination with the county recorder at the



1 same time as the executive officer of the local agency
2 formation commission files the certificate of completion
3 pursuant to Section 57203. The certificate of contract
4 termination shall include a legal description of the land
5 for which the city terminates the contract.

6 SEC. 3. Section 51255 of the Government Code is
7 amended to read:

8 51255. Notwithstanding any other provision of this
9 chapter, the parties may upon their mutual agreement
10 rescind a contract in order simultaneously to enter into an
11 open-space easement agreement pursuant to the
12 Open-Space Easement Act of 1974 (Chapter 6.6
13 (commencing with Section 51070)), provided that the
14 easement is at least as restrictive as a contract pursuant
15 to this chapter. The easement would enforceably restrict
16 the same property for an initial term of not less than 10
17 years. This action may be taken notwithstanding the prior
18 serving of a notice of nonrenewal.

19 SEC. 4. Section 51257 of the Government Code is
20 amended to read:

21 51257. (a) To facilitate a lot line adjustment,
22 pursuant to subdivision (d) of Section 66412, and
23 notwithstanding any other provision of this chapter, the
24 parties may mutually agree to rescind the contract or
25 contracts and simultaneously enter into a new contract or
26 contracts pursuant to this chapter, provided that the
27 board or council finds all of the following:

28 (1) The new contract or contracts would enforceably
29 restrict the adjusted boundaries of the parcel for an initial
30 term for at least as long as the unexpired term of the
31 rescinded contract or contracts, but for not less than 10
32 years.

33 (2) There is no net decrease in the amount of the
34 acreage restricted. In cases where two parcels involved in
35 a lot line adjustment are both subject to contracts
36 rescinded pursuant to this section, this finding will be
37 satisfied if the aggregate acreage of the land restricted by
38 the new contracts is at least as great as the aggregate
39 acreage restricted by the rescinded contracts.

1 (3) At least 90 percent of the land under the former
2 contract or contracts remains under the new contract or
3 contracts.

4 (4) After the lot line adjustment, the parcels of land
5 subject to contract will be large enough to sustain their
6 agricultural use, as defined in Section 51222.

7 (5) The lot line adjustment would not compromise the
8 long-term agricultural productivity of the parcel or other
9 agricultural lands subject to a contract or contracts.

10 (6) The lot line adjustment is not likely to result in the
11 removal of adjacent land from agricultural use.

12 (b) Nothing in this section shall limit the authority of
13 the board or council to enact additional conditions or
14 restrictions on lot line adjustments.

15 (c) Only one new contract may be entered into
16 pursuant to this section with respect to a given parcel,
17 prior to January 1, 2003.

18 (d) In the year 2002, the department's Williamson Act
19 Status Report, prepared pursuant to Section 51207, shall
20 include a review of the performance of this section.

21 (e) This section shall remain in effect only until
22 January 1, 2003, and as of that date is repealed, unless a
23 later enacted statute, that is enacted on or before January
24 1, 2003, deletes or extends that date.

25 SEC. 5. Section 51290 of the Government Code is
26 amended to read:

27 51290. (a) It is the policy of the state to avoid,
28 whenever practicable, the location of any federal, state,
29 or local public improvements and any improvements of
30 public utilities, and the acquisition of land therefor, in
31 agricultural preserves.

32 (b) It is further the policy of the state that whenever
33 it is necessary to locate such an improvement within an
34 agricultural preserve, the improvement shall, whenever
35 practicable, be located upon land other than land under
36 a contract pursuant to this chapter.

37 (c) It is further the policy of the state that any agency
38 or entity proposing to locate such an improvement shall,
39 in considering the relative costs of parcels of land and the
40 development of improvements, give consideration to the



1 value to the public, as indicated in Article 2 (commencing
2 with Section 51220), of land, and particularly prime
3 agricultural land, within an agricultural preserve.

4 SEC. 6. Section 51290.5 of the Government Code is
5 amended to read:

6 51290.5. As used in this chapter, “public
7 improvement” means facilities or interests in real
8 ~~property, including, but not limited to, the public~~
9 ~~improvements as defined in subdivisions (a) through (j)~~
10 ~~of Section 51293, owned by a public agency or person, as~~
11 ~~property, including easements, rights-of-way, and~~
12 ~~interests in fee title, owned by a public agency or person,~~
13 ~~as defined in subdivision (a) of Section 51291.~~

14 SEC. 7. Section 51291 of the Government Code is
15 amended to read:

16 51291. (a) As used in this section, and Sections 51292
17 and 51295, (1) “public agency” means any department or
18 agency of the United States or the state, and any county,
19 city, school district, or other local public district, agency,
20 or entity, and (2) “person” means any person authorized
21 to acquire property by eminent domain.

22 (b) Whenever it appears that land within an
23 agricultural preserve may be required by a public agency
24 or person for a public use, the public agency or person
25 shall advise the Director of Conservation and the local
26 governing body responsible for the administration of the
27 preserve of its intention to consider the location of a
28 public improvement within the preserve. In accordance
29 with Section 51290, the notice shall include an
30 explanation of the preliminary consideration of Section
31 51292, and give a general description, in text or by
32 diagram, of the agricultural preserve land proposed for
33 acquisition, and a copy of any applicable contract created
34 under this chapter. The Director of Conservation shall
35 forward to the Secretary of Food and Agriculture, a copy
36 of any material received from the public agency or person
37 relating to the proposed acquisition.

38 Within 30 days thereafter, the Director of Conservation
39 and the local governing body shall forward to the
40 appropriate public agency or person concerned their

1 comments with respect to the effect of the location of the
2 public improvement on the land within the agricultural
3 preserve and those comments shall be considered by the
4 public agency or person. In preparing those comments,
5 the Director of Conservation shall consider issues related
6 to agricultural land use, including, but not limited to,
7 matters related to the effects of the proposal on the
8 conversion of adjacent or nearby agricultural land to
9 nonagricultural uses, and shall consult with, and
10 incorporate the comments of, the Secretary of Food and
11 Agriculture on any other matters related to agricultural
12 operations. The failure of any public agency or person to
13 comply with the requirements of this section shall not
14 invalidate any action by the agency or person to locate a
15 public improvement within an agricultural preserve.
16 However, the failure by any person or public agency,
17 other than a state agency, to comply with the
18 requirements of this section shall be admissible in
19 evidence in any litigation for the acquisition of that land
20 or involving the allocation of funds or the construction of
21 the public improvement. This subdivision does not apply
22 to the erection, construction, alteration, or maintenance
23 of gas, electric, water, or communication utility facilities
24 within an agricultural preserve if that preserve was
25 established after the submission of the location of those
26 facilities to the city or county for review or approval.

27 (c) When land in an agricultural preserve is acquired
28 by a public entity, the public entity shall notify the
29 Director of Conservation within 10 working days. The
30 notice shall include a general explanation of the decision
31 and the findings made pursuant to Section 51292. If
32 different from that previously provided pursuant to
33 subdivision (b), the notice shall also include a general
34 description, in text or by diagram, of the agricultural
35 preserve land acquired and a copy of any applicable
36 contract created under this chapter.

37 (d) If, after giving the notice required under
38 subdivisions (b) and (c) and before the project is
39 completed within an agricultural preserve, the public
40 agency or person proposes any significant change in the



1 public improvement, it shall give notice of the changes to
2 the Director of Conservation and the local governing
3 body responsible for the administration of the preserve.
4 Within 30 days thereafter, the Director of Conservation
5 and the local governing body may forward to the public
6 agency or person their comments with respect to the
7 effect of the change to the public improvement on the
8 land within the preserve and the compliance of the
9 changed public improvements with this article. Those
10 comments shall be considered by the public agency or
11 person, if available within the time limits set by this
12 subdivision.

13 (e) If the notices and findings required by this section
14 and Section 51292 are given and contained within
15 documents prepared pursuant to the California
16 Environmental Quality Act (Division 13 (commencing
17 with Section 21000) of the Public Resources Code) those
18 documents may be used to meet the notification and
19 findings requirements of this section and Section 51292,
20 as long as they are provided no later than the times set
21 forth in this section.

22 Any action or proceeding regarding notices or findings
23 required by this article filed by the Director of
24 Conservation or the local governing body administering
25 the agricultural preserve shall be governed by Section
26 51294.

27 SEC. 8. Section 51295 of the Government Code is
28 amended to read:

29 51295. When any action in eminent domain for the
30 condemnation of the fee title of an entire parcel of land
31 subject to a contract is filed, or when that land is acquired
32 in lieu of eminent domain for a public improvement by
33 a public agency or person, or whenever there is any such
34 action or acquisition by the federal government or any
35 person, instrumentality, or agency acting under the
36 authority or power of the federal government, the
37 contract shall be deemed null and void as to the land
38 actually being condemned, or so acquired as of the date
39 the action is filed, and for the purposes of establishing the

1 value of the land, the contract shall be deemed never to
2 have existed.

3 Upon the termination of the proceeding, the contract
4 shall be null and void for all land actually taken or
5 acquired.

6 When an action to condemn or acquire less than all of
7 a parcel of land subject to a contract is commenced, the
8 contract shall be deemed null and void as to the land
9 actually condemned or acquired and shall be disregarded
10 in the valuation process only as to the land actually being
11 taken, unless the remaining land subject to contract will
12 be adversely affected by the condemnation, in which case
13 the value of that damage shall be computed without
14 regard to the contract.

15 When an action to condemn or acquire an interest that
16 is less than the fee title of an entire parcel or any portion
17 thereof, of land subject to a contract is commenced, the
18 contract shall be deemed null and void as to that interest
19 and, for the purpose of establishing the value of only that
20 interest, shall be deemed never to have existed, unless the
21 remaining interests in any of the land subject to the
22 contract will be adversely affected, in which case the
23 value of that damage shall be computed without regard
24 to the contract.

25 The land actually taken shall be removed from the
26 contract. Under no circumstances shall land be removed
27 that is not actually taken for a public improvement,
28 except that when only a portion of the land or less than
29 a fee interest in the land is taken or acquired, the contract
30 may be canceled with respect to the remaining portion
31 or interest upon petition of either party and pursuant to
32 the provisions of Article 5 (commencing with Section
33 51280).

34 For the purposes of this section, a finding by the board
35 or council that no authorized use may be made of the land
36 if the contract is continued on the remaining portion or
37 interest in the land, may satisfy the requirements of
38 subdivision (a) of Section 51282.

39 If, after acquisition, the acquiring public agency
40 determines that it will not for any reason actually locate



1 on that land or any part thereof, the public improvement
2 for which the land was acquired, before returning the
3 land to private ownership, the public agency shall give
4 written notice to the Director of Conservation and the
5 local governing body responsible for the administration
6 of the preserve, and the land shall be reenrolled in a new
7 contract or encumbered by an enforceable deed
8 restriction with terms at least as restrictive as those
9 provided by this chapter. The duration of the restriction
10 shall be determined by subtracting the length of time the
11 land was held by the acquiring public agency or person
12 from the number of years that remained on the original
13 contract at the time of acquisition.

14 SEC. 9. No reimbursement is required by this act
15 pursuant to Section 6 of Article XIII B of the California
16 Constitution because a local agency or school district has
17 the authority to levy service charges, fees, or assessments
18 sufficient to pay for the program or level of service
19 mandated by this act, within the meaning of Section 17556
20 of the Government Code.

21 Notwithstanding Section 17580 of the Government
22 Code, unless otherwise specified, the provisions of this act
23 shall become operative on the same date that the act
24 takes effect pursuant to the California Constitution.

25 SEC. 10. This act shall become operative only if
26 Senate Bill No. 2227 of the 1997–98 Regular Session
27 becomes effective on or before January 1, 1999.